

76 - 696

Supreme Court, U. S.

FILED

DEC 13 1976

MICHAEL RODAK, JR. CLERK

IN THE

Supreme Court Of The United States

NO.

~~XXXX~~

POWELL MANUFACTURING COMPANY, INC.,

Appellant,

- vs. -

HARRINGTON MANUFACTURING COMPANY, INC.,

Appellee.

HARRINGTON MANUFACTURING COMPANY, INC.,

Appellee,

-vs.-

POWELL MANUFACTURING COMPANY, INC.,

Appellant.

MOTION TO DISMISS

STEPHEN R. BURCH

Attorney for Appellee

203 Dundee Street

P. O. Box 9

Windsor, North Carolina 27983

IN THE

Supreme Court Of The United States

NO.

POWELL MANUFACTURING COMPANY, INC.,

Appellant,

- vs. -

HARRINGTON MANUFACTURING COMPANY, INC.,

Appellee.

HARRINGTON MANUFACTURING COMPANY, INC.,

Appellee,

-vs.-

POWELL MANUFACTURING COMPANY, INC.,

Appellant.

MOTION TO DISMISS

Appellee, Harrington Manufacturing Company, Inc., respectfully moves, pursuant to Rule 16-1(b) of the United States Supreme Court, dismissal of entitled action for the following reasons:

1. That no substantial Federal question as alleged by appellant has been expressly passed upon by the Supreme Court of North Carolina.

2. The question before the North Carolina Court upon which judgment was entered was whether claim by appellant, in an independent subsequently filed action constituted a compulsory counterclaim in prior action of appellee; the Court held that it did.

3. The North Carolina Court had no cause to address the question of constitutionality of the Statute attacked by appellant as the case has not been tried and appeals were decided on other issues.

4. That this appeal is a further effort to avoid or postpone trial of this case by appellant which has filed action in the Superior Court of Mecklenburg County, North Carolina, above referred to, and in the United States District Court for the Western District of North Carolina, being Civil Action No. CC-75-362, alleging the same facts and basis for recovery as contained in the State action and putting appellee to additional expense; that said Federal Court action has been stayed by the Honorable

James B. McMillan, District Court Judge, pending resolution in the North Carolina Court.

5. That the judgment of the North Carolina Court is based on North Carolina Rules of Civil Procedure and determination was made on a non-federal basis.

6. The question to be tried in the State Court does not involve a substantial constitutional question, but whether a competitor is liable for its advertising if, in fact, said advertising is false and causes damage to another.

S. R. Burch, Attorney for Harrington
Manufacturing Company, Inc.

W. W. Pritchett, Attorney for
Harrington Manufacturing Company, Inc.
203 Dundee Street
Post Office Box 9
Windsor, North Carolina 27983
Telephone: (919) 794-3161

CERTIFICATE OF SERVICE

I, S. R. Burch, an attorney for Harrington Manufacturing Company, Inc., appellee herein, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 24th day of November, 1976, I served a copy of the foregoing Motion to Dismiss the Notice of Appeal to the Supreme Court of the United States, which was served on the undersigned on November 18, 1976, upon

Gaston H. Gage, Esquire
Attorney at Law
1100 Cameron Brown Building
301 South McDowell Street
Charlotte, North Carolina 28204

by mailing a copy of the same in a duly addressed envelope, with first class postage prepaid, addressed as above stated.

S. R. Burch, Attorney for Harrington
Manufacturing Company, Inc.
Post Office Box 9
Windsor, North Carolina 27983
Telephone: (919) 794-3161